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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,745	01/17/2002	Pankaj S. Parekh	IPOL-0002	3266

7590 09/14/2006

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EXAMINER

ZAND, KAMBIZ

ART UNIT PAPER NUMBER

2132

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/052,745

Applicant(s)

PAREKH ET AL.

Examiner

Kambiz Zand

Art Unit

2132

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14-21, 27, 29 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 14-21, 27, 29 and 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

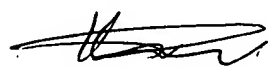
Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01/17/2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


KAMBIZ ZAND
PRIMARY EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this section can be found in the prior office action.
2. The prior office actions are incorporated herein by reference. In particular, the observations with respect to claim language, and response to previously presented arguments.
3. Claims 9-13, 22-26, 28, 30 and 34-39 have been cancelled.
4. Claims 1-2, 4, 8, 14-15, 17, 21, 27, 29, and 31 have been amended.
5. Claims 1-8, 14-21, 27, 29, and 31-33 are pending.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Specification

7. The disclosure is objected to because of the following informalities: Please update page 1, paragraph [0002] under the heading "CROSS REFERENCE TO RELATED APPLICATIONS" including information of any application that has been matured into a patent.
Appropriate correction is required.

Claim Rejections - 35 USC § 101

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. **Claims 1-8, 14-21, 27, 29, and 31-33** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. A markup language is a disembodied data structure in the forms of packets having NO TANGIBLE EMBODIMENT and therefore, is nonstatutory under 35 U.S.C. 101. See *In re Warmerdam*, 33 F.3d 1354; 31 USPQ2d 1754. See MPEP § 2106 IV. B. 1. See <http://www.uspto.gov/web/menu/pbmethod/> (35 U.S.C. 101 Training Materials).

Examiner suggests the following in order to overcome 101 rejections above:

Adding the limitation “a network having plurality of servers and customers, transmitting and receiving the stream of packets” after the limitation “comprising:”

Into claim 1, and 27; and

Adding the limitation “having a network having plurality of servers and customers, transmitting and receiving the stream of packets” after the limitation “An apparatus” line 1 of the claim 14 in harmony with the applicant’s specification.

Claim Rejections - 35 USC 102 § 103

- Examiner maintains the previous Former Examiner's rejection of the claims in the light of Applicant's arguments on pages 12 and 13 of the response filed since applicant clearly disclose the differences of the prior art of the record with applicant's invention in utilization of "packet extension to eliminate shared memory", a point that examiner agrees with. However In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. **"packet extension to eliminate shared memory"**) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

- However examiner would make the following suggestions in order to expedite the examination process:
- **Claims 1-8, 14-21, 27, 29, and 31-33** would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 101, set forth in this Office action above; and inserting the limitation "eliminating shared memory" after the limitation "appending an extension to the packet" in line 4 of claims 1, 14 and 27.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent

Art Unit: 2132

and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-8, 14-21, 27, 29 and 31-33 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-26 of U.S.

Patent No. 7, 058, 821. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations set forth in the instant application above is anticipated by claims 1-26 of U.S. Patent No. 7, 058, 821.

Examiner would provide a complete comparison of the claims once the issue of 101 above is resolved and if such comparison becomes necessary.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

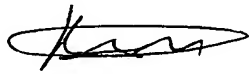
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kambiz Zand whose telephone number is (571) 272-3811. The examiner can normally be reached on Monday-Thursday (8:00-5:00). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gilberto Barron can be reached on (571) 272-3799. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see

Art Unit: 2132

<http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



KAMBIZ ZAND
PRIMARY EXAMINER

09/13/2006

AU 2132